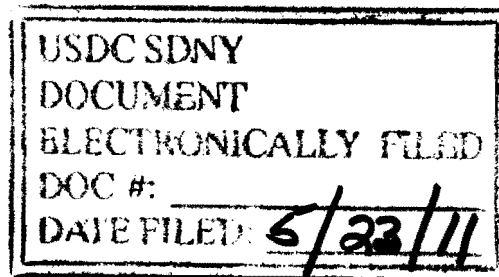


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



OSMAN OZSUSAMLAR,

Plaintiff,

- against -

UNITED STATES

Defendant.

10 Civ. 3455 (RJH)

**MEMORANDUM OPINION AND**  
**ORDER**

Richard J. Holwell, District Judge:

On January 3, 2011, Osman Ozsusamlar ("Ozsusamlar") petitioned the Court to modify his fine on the grounds that he could no longer pay. The Probation Department determined that Ozsusamlar was able to pay a fine because he owned a house worth \$500,000 and had \$100,000 of equity in the house. Accordingly, Judge Leisure imposed a \$17,500 fine.

Ozsusamlar petitions the undersigned, who was assigned this case following the retirement of Judge Leisure, to modify his fine. He claims that he did not own the house at the time he spoke with Probation and so the fine should not have been imposed in the first place. He argues that the Court has the authority to modify the fine pursuant to 18 U.S.C. § 3572(d)(3), which provides,

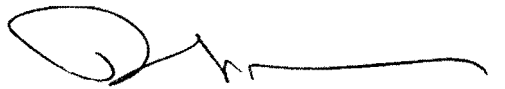
A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

18 U.S.C. § 3572(d)(3).

Ozsusamlar's reliance on this statute is misplaced. He does not seek to modify the payment schedule for his fine, but rather to modify the amount that he must pay. The Court does not have the authority to modify a fine *sua sponte*. Rather, pursuant to 18 U.S.C. § 3573, the Court may modify or remit a fine only upon petition of the government. In *United States v. Martinez*, the Second Circuit reviewed a similar request by a criminal defendant. 281 F. App'x 39 (2d Cir. 2008). The Second Circuit rejected the defendant's argument that courts had the power to modify fines *sua sponte* pursuant to § 3572(d)(3) and held that the government needed to bring such a petition. *Id.* at 41. Accordingly, Ozsusamlar's petition to modify his fine is denied.

SO ORDERED

Dated: New York, New York  
May 19, 2011

A handwritten signature in black ink, appearing to read 'Richard J. Holwell', written over a horizontal line.

Richard J. Holwell  
United States District Judge